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EXAMINER

HAND, MELANIE JO

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JEROME S. VEITH

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Appeal 2009-006118  
Application 10/693,555  
Technology Center 3700

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Decided: May 19, 2010

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Before: LINDA E. HORNER, JENNIFER D. BAHR, and STEVEN D. A.  
MCCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Jerome S. Veith (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1-23, which are all of the claims on appeal. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

Appellant's claimed invention is a disposable undergarment for a male user. Spec. 1:5. Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A disposable absorbent garment comprising:

a body chassis having a terminal front waist edge, a terminal back waist edge longitudinally spaced from said terminal front waist edge, a first length defined between said terminal front waist edge and said terminal back waist edge, and a laterally extending centerline defined half way between said terminal front and back waist edges, wherein said body chassis is formed from a laminate structure having a plurality of layers, wherein all of said layers have the same length such that a thickness of said body chassis is the same along said length of said layers; and

an absorbent insert fixedly secured to said body chassis, said absorbent insert comprising a retention region comprising an absorbent material, said retention region having first and second longitudinally spaced boundaries and a second length defined between said first and second boundaries, wherein said second length is less than or equal to 50% of said first length, wherein at least 70% of said second length is positioned between said centerline and said terminal front waist edge, and wherein there is no absorbent material disposed longitudinally outside of said retention region defined between said first and second boundaries.

Appellant seeks review of the Examiner's rejection of claims 1-23 under 35 U.S.C. § 103(a) as unpatentable over Van Gompel (US 6,217,563 B1) and Everett (US 6,437,214 B1).

The Examiner found Van Gompel discloses all aspects of the invention of claims 1-23 except the claimed size and position limitations of the retention region. Ans. 3-5. The Examiner relied on Everett to teach a target area 52, sized and positioned where the majority of an insult of exudates will occur. *Id.* The Examiner concluded that it would have been obvious to modify the article of Van Gompel by sizing and positioning the retention area as taught by Everett in order to place the retention area where the majority of the flow of exudates from an insult will occur. *Id.* The Examiner also reasoned that modification of Van Gompel's retention region to meet the claimed size and position limitations was a matter of optimization, with Everett's target area 52 providing evidence of optimal placement of the retention region. Ans. 17-18.

Appellant argues Everett does not disclose a retention region sized and positioned as called for in independent claims 1, 6, 17, and 20, or a retention region positioned as called for in independent claim 11. App. Br. 9-14; Reply Br. 1-4.

The issues before us are:

Does the combination of Van Gompel and Everett teach a disposable absorbent garment having a retention area sized and positioned as called for in independent claims 1, 6, 17, and 20?

Does the combination of Van Gompel and Everett teach a disposal absorbent garment having a retention area positioned as called for in independent claim 11?

Independent claims 1, 6, 17, and 20 call for the retention region to be less than or equal to 50 percent of the distance from the terminal front waist edge to the terminal back waist edge of the garment. Independent claims 1, 6, 11, 17, and 20 call for at least 70 percent of the length of the retention region to be positioned between the centerline (halfway between the waist edges) and the terminal front waist edge. The Examiner found that Van Gompel does not disclose the claimed size and position of the retention region. Ans. 3-5.

The first rationale articulated by the Examiner is that it would have been obvious to size and position the retention area of Van Gompel, based on Everett's target area, in order to place the retention area where the majority of the flow of exudates from an insult will occur. Ans. 3-5. This rationale is premised on a finding that Everett discloses a retention area sized and positioned where the majority of the flow of exudates from an insult will occur. *Id.* As Appellant correctly points out, such a reading of Everett is not based upon what the disclosure as a whole would teach a person of ordinary skill in the art. App. Br. 12; Reply Br. 2.

Everett discloses an absorbent composite system 26, such as a diaper 20, having a composite layered structure (absorbent core 30) including two or more absorbent layer regions. Everett, col. 1, ll. 7-12, 61-63; col. 7, ll. 35-37; col. 10, ll. 7-8; fig. 1. The first layer region 48 is positioned on the body side of absorbent core 30 in substantially direct contact with the incoming liquid, and serves as an intake layer. Everett, col. 2, 16-24; col. 5, ll. 29-32; figs. 1, 1A, 1B. Everett discloses that first layer region 48 can be positioned to cover the area where liquids such as urine are introduced into the absorbent structure (target area 52). Everett, col. 19, ll. 45-49; fig. 2.

First layer region 48 has composite properties furnishing void volume and high permeability to provide optimum intake performance by staying at low saturation through as many insults of the product as possible for rapid uptake of liquid until it can be absorbed by the second layer region. Everett, col. 2, ll. 4-5, 16-24; col. 19, ll. 38-45. Second layer region 50, a high saturation wicking layer region, is positioned on the outward side of absorbent core 30. Everett, col. 2, ll. 20-21; col. 17, ll. 61-65; figs. 1A, 1B.

Everett discloses that first and second layer regions 48, 50 cooperatively interact by wicking or other mechanisms to concentrate liquid in the second layer region 50, increasing the potential of second layer 50 to move and distribute liquid through capillary action due to the relatively higher saturation level and amount of liquid available. Everett, col. 4, ll. 45-53; col. 4, l. 65 - col. 5, l. 6. The first and second layer configuration more fully utilizes that potential absorbent capacity of the adsorbent structure, more efficiently moves and distributes acquired liquid to remote areas, acquires and intakes liquid at a rapid rate, and maintains the desired intake rate. Everett, col. 2, ll. 57-67.

Contrary to the Examiner's finding, Everett's target area 52 is not a retention area sized and positioned where the majority of the flow of exudates from an insult will occur. Rather, a person of ordinary skill in the art would recognize that Everett's target area 52 is an intake area that functions in cooperation with a second absorbent layer. The Examiner has not pointed to, nor are we able to find, any disclosure in Everett suggesting that the absorbent portion may be limited to the intake area, with no absorbent material disposed longitudinally outside of a retention region defined between first and second boundaries.

The second rationale articulated by the Examiner is that modification of Van Gompel to meet the claimed size and position limitations was a matter of optimization, with Everett's target area 52 providing evidence of optimal placement of the retention region. Ans. 17-18. As explained in our analysis of the first rationale, *supra*, Everett does not disclose evidence of any factors which one of ordinary skill in the art might have sought to optimize when deciding the placement of a retention region, but rather discloses evidence of an intake layer that may be used in conjunction with another, less localized absorbent layer.

The combination of Van Gompel and Everett does not teach a disposal absorbent garment having a retention area sized and positioned as called for in independent claims 1, 6, 17, and 20. The rejection of claims 2-5, 7-10, 18, 19, and 21-23 is also in error by virtue of their dependence from claims 1, 6, 17, and 20.

The combination of Van Gompel and Everett does not teach a disposable absorbent garment having a retention area positioned as called for in claim 11. The rejection of claims 12-16 is also in error by virtue of their dependence from claim 11.

We REVERSE the Examiner's decision to reject claims 1-23.

REVERSED

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